28(5)(b) for leave to apply for an order directing the arbitrator to give further reasons.

Order accordingly.

Solicitors: *Chor Pee & Co; Donaldson & Burkinshaw.*

Reported by *Wong Kim Fatt*

Tan Siew Kee v Chua Ah Boey

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 682 OF 1987
CHAN SEK KEONG JC
23 DECEMBER 1987

Family Law – Guardianship – Illegitimate son – Custody of child – Welfare – Guardianship of Infant Act (Cap 122, 1985 Ed), s 3

The plaintiff met the defendant in 1984 and lived with her for a certain period of time. During this period, a child was born. However, due to frequent quarrels between the plaintiff and the defendant, the defendant soon left the plaintiff. The defendant took the child with her. The child was looked after by the defendant's sister. Thereafter the plaintiff took back the child. At the date of the present application, the child was in the plaintiff's custody. The issue in the present case was who should have the custody of the child.

Held: (1) The expression 'welfare' under s 3 of the Guardianship of Infant Act (Cap 122, 1985 Ed) is to be taken in its widest sense. It means the general well-being of the child and all aspects of his upbringing, religious, moral as well as physical. His happiness, comfort and security also go to make up his well-being. A loving parent with a stable home is conducive to the attainment of such well-being. It is not to be measured in monetary terms.

(2) In the present case, the facts show that on the father's side there was little doubt that he loves his son and that he can provide a stable home.

(3) The matrimonial history of the defendant shows that she was more concerned with her own welfare than that of her children.

(4) The strongest evidence of the defendant's lack of interest in the child and therefore his welfare was the fact that although it has been alleged that the plaintiff had forcibly taken his son away from her (or her sister), the defendant took no steps to resume custody of the child. It is the plaintiff who has taken the initiative to regularize his position vis-à-vis his son by making this application for custody. This is a clear indication that he cares more for his son and his welfare than his mother.

(5) Custody of the child should be granted to the plaintiff with reasonable access to the defendant.

Cases referred to
1 *J v C* [1970] AC 669 (refd)
2 *Re H* (1965) 109 Sol J 575 (refd)

Legislation referred to
Guardianship of Infant Act (Cap 122, 1985 Ed) s 3

Jeffrey Soh for the plaintiff.
Laura Low (Miss) for the defendant.

Cur Adv Vult

Chan Sek Keong JC: This is an application by the plaintiff for custody, care and control of his illegitimate son, viz Tan Kong Wei, who was born on 27 May 1986. The defendant is the mother of the child.

On 9 November 1987, I granted custody of the child to the plaintiff after reading the affidavits filed herein and hearing counsel for both parties. I did not consider it necessary nor did counsel ask for oral testimony to be given in open court notwithstanding the many issues of fact in dispute between the parties.

The undisputed facts are as follows. The plaintiff met the defendant in 1984 when she was married to but living separately from her husband, established a liaison with her and lived with her for three years, during which the child was born. Whether or not the husband of the defendant knew of the adulterous relationship of the defendant is not disclosed in the affidavit but on 7 August 1985, the defendant was granted a decree nisi in divorce no 482 of 1985 on the ground of unreasonable behaviour on the part of the husband. By consent of the parties, custody of the child of the marriage, a son born on 12 September 1981, was given to the husband with reasonable access to the defendant.

As a result of frequent quarrels between the plaintiff and the defendant, she left him on 16 January 1987 and took with her the child to her sister's home in Bedok. At that time, the plaintiff and the defendant had been living in a Housing Board flat in MacPherson Lane since May 1986. The flat was bought by him in the name of the defendant and his elderly aunt. At the date of this application, the plaintiff was still living with his son and his aunt in the flat.

After she left the plaintiff, the defendant did not or could not look after the son personally. The son was looked after by her sister from January to May 1987. The sister has filed an affidavit stating that she was paid about $400 per month by the defendant for taking care of the child whereas the plaintiff has deposed that he paid the sister $450 per month to look after the child on the understanding that the child would be brought back to him on Saturdays and Sundays.

The sister has alleged that the plaintiff took the child back in May 1987 (presumably without her permission) and refused to return him the defendant. There is, however, no evidence or allegation that the defendant did demand the return of the child. The plaintiff's version is that the sister brought the child home to him in a lean and sickly condition. Whatever the truth of this may be, the fact was that by June 1987, the sister was (on her own admission) no longer able to look after the child because

she started work in a garment factory and was not even able to look after her own daughter (who had to be looked after by her sister-in-law).

The plaintiff says that he loves his son very much and that he is presently being looked after by his aunt when he is out of the house. He pays a sum of $450 a month to his aunt to look after his son. The aunt is elderly and unmarried and the plaintiff is confident that his son will grow up with good values under his care and that of his aunt.

The plaintiff says that the defendant is a gambler and addicted to mahjong and that since the birth of the son has neglected to look after the son by going out early in the morning and coming back at night. That was one of the reasons for their having frequent quarrels. Because of this, he had to employ a baby sitter to look after the son when the defendant went back to work as a hairdresser about a month after his birth. The defendant has, of course, denied that she is a gambler but has not denied that she plays the occasional game of mahjong. She was in October 1987 seen by a private investigator (employed by the plaintiff) entering a house in Aljunied Road, where the people inside were observed to be playing 'paikow' and mahjong. She was also been playing mahjong in the rear of her hairdressing shop. The defendant, however, has denied that the said premises were gambling dens. She and her partner were also observed taking some money from some men on 15 October 1987. She did not deny this but explained that they were taking a loan for their business.

The defendant has alleged that the plaintiff offered to buy his son for $5,000 from the defendant. However, a friend and former business partner of the defendant, one Yau Yoke Ying, has also filed an affidavit stating that sometime early this year, she received a message from the plaintiff to relay to the defendant and the message was that he was prepared to pay $5,000 for the custody of the child. That, of course, is very different from the defendant's allegation. The plaintiff's version of this offer is that it was made to the defendant in order that her name be removed from the flat bought in her name and that of his aunt. Obviously, the allegations of the defendant and of Madam Yau are intended to suggest the plaintiff was prepared to buy the child or his custody and that it is wrong to do so. On my part, I am not sure that such an inference should be made or that it is reprehensible or wrong for a father to want to obtain custody of his own son, even if he has to pay money for it, when he believes that his welfare had not been looked after by the natural mother.

Perhaps the episode is intended to suggest that the plaintiff was so desperate to obtain custody that he forcibly took the son away from the care of the defendant's sister. Not having heard the parties, I am, of course, unable to make a specific finding on this point. In any case, even if it were true, the plaintiff probably did it because he really cared for his son.

So far as the law is concerned, s 3 of the Guardianship of Infant Act (Cap 122, 1985 Ed) provides that in proceedings for the custody of an infant, the court shall regard the welfare of the infant as the first and paramount consideration and neither the father nor the mother has a superior right to custody. This Act applies not only between spouses but to whoever are the parties before the court in any proceedings relating to the custody of an infant: *J* v *C*[1] (and in particular Lord Upjohn at p 724 et seq) and *Re H*[2] (where the Court of Appeal upheld the decision of the court granting custody of an illegitimate child to the putative father on the ground that he could provide a stable home).

The expression 'welfare' is to be taken in its widest sense. It means the general well-being of the child and all aspects of his upbringing, religious, moral as well as physical. His happiness, comfort and security also go to make up his well-being. A loving parent with a stable home is conducive to the attainment of such well-being. It is not to be measured in monetary terms.

In the present case, the facts show that on the father's side, there is little doubt that he loves his son and that he can provide a stable home. Apart from an allegation by the defendant that the plaintiff would beat the child when he was drunk, which allegation the plaintiff has denied, there is no allegation by the defendant that the child's welfare would suffer if he were given into the custody of the plaintiff or would be enhanced if given into the custody of the defendant.

On the side of the mother, she also says she loves the son. But it is also true she has no time to look after the son but seeks custody so that he can be looked after by her sister (see para 21 of her affidavit of 22 September 1987). The sister, who has a four-year-old daughter, has admitted (see her affidavit of 6 November 1987) that she would be unable to look after even her child and that her sister-in-law, who has three children aged 15, 12 and 10, would be able to look after her daughter as well as the child in question. No evidence has been produced as to whether the transfer of the care of the child to his sister-in-law is conducive to the welfare of the child. There is evidence to show that the defendant is a mahjong gambler and that she keeps company with a number of single women (mostly divorcees) in order to talk, exchange video tapes and sometimes to have a game of mahjong. There is also evidence that she has been borrowing money from moneylenders. These habits of the defendant will obviously reduce her capacity or her ability or even desire to look after the child or to contribute to his welfare.

The matrimonial history of the defendant shows that she is more concerned with her own welfare than that of her children. Custody of her son by her marriage, born on 12 September 1981, was given to her former husband in consideration of his not contesting the divorce petition, an allegation made by the plaintiff which she has denied. But the grounds of her petition for divorce were that, inter alia, her husband had failed to maintain her and the son and had behaved in such a way that she could not be reasonably expected to live with him. She should never have surrendered the custody of her son on these grounds.

In my view, the strongest evidence of her lack of interest in the child, and therefore his welfare, is the fact that although it has been alleged that the plaintiff had forcibly taken his son away from her (or her sister), the defendant took no steps to resume custody of the child. It is the plaintiff who has taken the initiative to regularize his position vis-à-vis his son by making this application for custody. This, to me, is a clear indication that he cares more for his son and his welfare than his mother.

For the above reasons, I granted custody of the child to the plaintiff and reasonable access to the defendant.

Order accordingly.

Solicitors: *Derrick Jeffrey & Ravi.*

Reported by *Gabriel Sebastian*

BRUNEI REPORTS

Khoo Ban Hock v Public Prosecutor

COURT OF APPEAL (BANDAR SERI BEGAWAN) – CRIMINAL APPEAL NO 3 OF 1988
YANG P, SILKE AND GODFREY JJ
25 AND 26 MAY 1988

Criminal Procedure – Sentences – Whether sentence of four years' imprisonment for criminal conspiracy to defraud was excessive – Exceptional mitigating factors – Appellant did not make personal financial gain – Previous good character – Unusual circumstances to be reflected in sentence – Principles applicable

The appellant pleaded guilty to a charge of criminal conspiracy to defraud under s 120B(2) of the Penal Code read with s 420. The appellant was the son of K, a prominent businessman and founder of NBB, a bank. Although the appellant was named as the chairman of NBB, K was the moving spirit behind the business. It transpired that NBB had made large unsecured loans to companies connected with K. The accounts of NBB were 'fiddled' to make it appear that there were profits. This was done to induce others, including the Government, to deposit money with NBB. The appellant claimed to know little about banking. He signed the accounts and reports blindly, without reading them. He was a filial son who did what his father told him. The trial court sentenced the appellant to four years' imprisonment. The appellant appealed against his sentence, contending that the trial court failed to give due weight to the exceptional mitigating circumstances generally and in particular to the appellant's previous good character and his lack of intention to make a personal financial gain. It was also submitted that as the legislation provided for a maximum term of seven years' imprisonment for the offence, there was a failure to give a sufficient discount to the appellant's plea of guilty.

Held, allowing the appeal: (1) In assessing whether the sentence given by the trial court was excessive, the discount for a plea of guilty should be substantial and the question to be asked is: If there were a conviction after trial, what would have been the appropriate sentence.

(2) It was accepted that the appellant was not a policy maker in NBB. But he should have realized that he had a duty to the outside shareholders of NBB and towards depositors and overseas institutions which were being provided with false information to induce them to deposit money with NBB. He failed to perform those duties. When he knew that something was wrong he should have resigned. He did not do so. The offences to which the appellant pleaded were grave and there should rightfully be an element of deterrence in that a chairman of a would-be major bank must receive such punishment as will in the public eye be a reflection of the gravity of his offence.

(3) However, the appellant did not, nor did he intend to, line his own pockets with public money. The evidence of any loss to the public is neutral and the benefit should be given to the appellant.

(4) The case is an unusual one and the sentence did not sufficiently reflect this aspect. Bearing in mind also all the other mitigating factors, the appeal court's interference is warranted.

(5) The proper sentence should be one of three years' imprisonment.